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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/765,714	01/18/2001	Sidney M. Baker	059376-00002	1589
31013 7590 11/20/2007 KRAMER LEVIN NAFTALIS & FRANKEL LLP INTELLECTUAL PROPERTY DEPARTMENT 1177 AVENUE OF THE AMERICAS NEW YORK, NY 10036			EXAMINER FRENEL, VANEL	
			ART UNIT 3627	PAPER NUMBER
			NOTIFICATION DATE 11/20/2007	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

klpatent@kramerlevin.com

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/765,714	BAKER ET AL.	
	Examiner	Art Unit	
	Vanel Frenel	3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 9-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 9-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

Notice to Applicant

1. This communication is in response to the Amendment filed on 2/12/07. Claims 1, 3, 7, 9, 11-16 and 18 have been amended. Claims 6 and 8 have been cancelled. Claims 1-5, 7 and 9 -18 are pending.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-5, 7, 9-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pattichis (Neural Network Models in EMG Diagnosis; May 5, 1995) and Gulati (6, 780,589) in view of Goldenderg (2002/0065682), for substantially the same reasons given in the previous Office Action, and incorporated herein. Further reasons are presented hereinbelow.

(A) As per the amended claim 1, Pattichis and Gulati do not explicitly disclose "wherein, in operation, the interactive medico-health data acquisition interface prompts a user to provide data sufficient to comprise a substantially complete description of his health; wherein the data is conceptually organized according to a defined substantially comprehensive medico-health taxonomy; and wherein the data stored in the memory in a multidimensional data structure whose dimensions reflect said taxonomy".

However, these features are known in the art, as evidenced by Goldenberg. In particular, Goldenberg suggests the limitations of "wherein, in operation, the interactive medico-health data acquisition interface prompts a user to provide data sufficient to comprise a substantially complete description of his health (See Goldenberg, Page 2, Paragraphs 0013-0016); wherein the data is conceptually organized according to a defined substantially comprehensive medico-health taxonomy (See Goldenberg, Page 1, Paragraph 0005, Paragraph 0011); and wherein the data stored in the memory in a multidimensional data structure whose dimensions reflect said taxonomy" (See Goldenberg, Page 4, Paragraphs 0046-0047).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the features of Goldenberg within the collective teachings of Pattichis and Gulati with the motivation of providing a multiple level service system including a processing device. The processing device is responsive to inquiries received over a communications medium. The processing device identifies a level of service and provides a user progressively greater degrees of interaction at respective levels of service (See Goldenberg, Page 2, Paragraph 0012).

(B) Claim 3 has been amended to recite "processes the stored data by implementing", "to find a set of other users whose multidimensional data structures are within a certain distance of the user's data structure according to a defined distance metric". However, this limitation has been met by Goldenberg in Page 5, Paragraphs 0051-0052).

(C) Claim 4 has been amended to recite slightly "further comprising" and "users".

However, these changes do not affect the scope and breadth of the claim as previously presented in the previous Office Action, and incorporated herein.

(D) As per the amended claim 7, Pattichis and Gulati do not explicitly disclose the limitations of "providing a first multidimensional data structure comprising a substantially complete description of the health of a first human being", "said data structure", "containing a plurality of other multidimensional data structures each comprising a substantially complete description of the health of another human being", "first multidimensional data structure and the plurality of other multidimensional data structures", "a", "multidimensional data structures", "multidimensional data structures", "providing".

However, these features are known in the art, as evidenced by Goldenberg. In particular, Goldenberg suggests the limitations of "providing a first multidimensional data structure comprising a substantially complete description of the health of a first human being (See Goldenberg, Page 4, Paragraphs 0047-0048)", "said data structure", "containing a plurality of other multidimensional data structures each comprising a substantially complete description of the health of another human being" (See Goldenberg, Page 4, Paragraphs 0043-0044), "first multidimensional data structure and the plurality of other multidimensional data structures", "a", "multidimensional data

structures”, “multidimensional data structures”, “providing” (See Goldenberg, Page 4, Paragraphs 0046-0047).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the features of Goldenberg within the collective teachings of Pattichis and Gulati with the motivation of providing a multiple level service system including a processing device. The processing device is responsive to inquiries received over a communications medium. The processing device identifies a level of service and provides a user progressively greater degrees of interaction at respective levels of service (See Goldenberg, Page 2, Paragraph 0012).

(E) Claims 9, 10 and 12 have been amended to recite the limitations of “multidimensional data structure”. However, this changes does not affect the scope and breadth of the claim as previously presented in the previous Office Action, and incorporated herein.

(F) Claim 11 has been amended to recite the limitation of “one of the first human being and the other human beings in the cluster”. However, this changes does not affect the scope and breadth of the claim as previously presented in the previous Office Action, and incorporated herein.

(G) Claim 13 has been slightly amended to recite "a". However, this changes does not affect the scope and breadth of the claim as previously presented in the previous Office Action, and incorporated herein.

(H) Claim 15 has been amended to recite the limitation of "health", "medico-health data acquisition", "a", "said", "categories or qualities". However, this changes does not affect the scope and breadth of the claim as previously presented in the previous Office Action, and incorporated herein.

(I) Claim 16 has been amended to recite the limitations of "said categories or qualities". However, this changes does not affect the scope and breadth of the claim as previously presented in the previous Office Action, and incorporated herein.

### ***Response to Arguments***

4. Applicant's arguments filed on 2/12/07 with respect to claims 1-5, 7 and 9-18 have been fully considered but they are not persuasive.

(A) At pages 7-11 of the response filed on 2/12/07, Applicant argues the followings:

(i) None of the references teaches or suggests "prompting a user to provide' data sufficient to comprise a substantially complete description comprehensive medico-health taxonomy, and wherein such data is stored in the memory in a dimensional data structure whose dimensions reflect said taxonomy.

(ii) None of the cited references allow a system to simply "listen to the patient" and "let the data speak".

(iii) The cited references, whether taken alone or in any combination, do not teach or suggest the systems and methods of claims 1, 7, 13 and 15.

(B) With respect to Applicant's first argument, the Examiner respectfully submitted that He relied the clear teaching of Goldenberg for such a teaching (See Page 1, Paragraphs 0010-0011; Page 2, Paragraph 0016; Page 5, Paragraph 0048). Therefore, Applicant's argument is not persuasive and the rejection is hereby sustained.

(C) With respect to Applicant's second argument, the Examiner respectfully submitted that He relied the clear teaching of Goldenberg for such a teaching (See Fig.7; Page 6, Paragraph 0054-005; Page 6, Paragraphs 0057-0061). Therefore, Applicant's argument is not persuasive and the rejection is hereby sustained.

(D) With respect to Applicant's third argument, Examiner respectfully submitted that obviousness is determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); *In re Hedges*, 783 F.2d 1038, 1039, 228 USPQ 685,686 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785,788 (Fed. Cir. 1984); and *In re Rinehart*, 531 F.2d 1048, 1052, 189 USPQ 143,147 (CCPA 1976).

Using this standard, the Examiner respectfully submits that he has at least satisfied the



burden of presenting a *prima facie* case of obviousness, since he has presented evidence of corresponding claim elements in the prior art and has expressly articulated the combinations and the motivations for combinations that fairly suggest Applicant's claimed invention.

Rather, Applicant does not point to any specific distinction(s) between the features disclosed in the references and the features that are presently claimed. In particular, 37 CFR 1.111(b) states, "A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the reference does not comply with the requirements of this section." Applicant has failed to specifically point out how the language of the claims patentably distinguishes them from the applied references. Also, arguments or conclusions of Attorney cannot take the place of evidence. *In re Cole*, 51 CCPA 919, 326 F.2d 769, 140 USPQ 230 (1964); *In re Schulze*, 52 CCPA 1422, 346 F.2d 600, 145 USPQ 716 (1965); *Mertizner v. Mindick*, 549 F.2d 775, 193 USPQ 17 (CCPA 1977).

In addition, the Examiner recognizes that references cannot be arbitrarily altered or modified and that there must be some reason why one skilled in the art would be motivated to make the proposed modifications. However, although the Examiner agrees that the motivation or suggestion to make modifications must be articulated, it is respectfully contended that there is no requirement that the motivation to make modifications must be expressly articulated within the references themselves. References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures, *In re Bozek*, 163 USPQ 545 (CCPA 1969).

The Examiner is concerned that Applicant apparently ignores the mandate of the numerous court decisions supporting the position given above. The issue of obviousness is not determined by what the references expressly state but by what they would reasonably suggest to one of ordinary skill in the art, as supported by decisions in *In re DeLisle* 406 Fed 1326, 160 USPQ 806; *In re Kell, Terry and Davies* 208 USPQ 871; and *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ 2d 1596, 1598 (Fed. Cir. 1988) (citing *In re Lalu*, 747 F.2d 703, 705, 223 USPQ 1257, 1258 (Fed. Cir. 1988)). Further, it was determined in *In re Lamberti et al*, 192 USPQ 278 (CCPA) that:

- (i) obviousness does not require absolute predictability;
- (ii) non-preferred embodiments of prior art must also be considered; and
- (iii) the question is not express teaching of references, but what they would suggest. Therefore, Applicant's argument is not persuasive and the rejection is hereby sustained.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but the applied art teaches devices and methods for generating and managing a database (6,463,430), information management, retrieval and display system and associated method (6,484,166), computer system and method for accessing medical information over a network (5,915,240), medical network system and method for transfer of information (6,424,996) and method for production of medical records and other technical documents (6,684,188).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vanel Frenel whose telephone number is 571-272-6769. The examiner can normally be reached on 6:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zeender Ryan Florian can be reached on 571-272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3627

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

V.F

V.F

November 7, 2007

Andrew Joseph Rudy  
Primary Examiner, AU 3627